

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

DAWN TRUCKING INC.

and

**Cases 29-CA-171337 &
29-CA-174915**

(b) (6), (b) (7)(C) an Individual

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 29-CA-171337 and Case 29-CA-174915, which are based on charges filed by (b) (6), (b) (7)(C) An Individual (the Charging Party), against Dawn Trucking Inc. (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 29-CA-171337 was filed by the Charging Party on March 7, 2016, and a copy was served on Respondent by U.S. mail on March 9, 2016.

(b) The first amended charge in Case 29-CA-171337 was filed by the Charging Party on March 17, 2016, and a copy was served on Respondent by U.S. mail on March 18, 2016.

(c) The second amended charge in Case 29-CA-171337 was filed by the Charging Party on May 23, 2016, and a copy was served on Respondent by U.S. mail on May 24, 2016.

2. (a) The charge in Case 29-CA-174915 was filed by the Charging Party on April 25, 2016, and a copy was served on Respondent by U.S. mail on April 27, 2016.

(b) The first amended charge in Case 29-CA-174915 was filed by the Charging Party on August 30, 2016, and a copy was served on Respondent by U.S. mail on August 30, 2016.

3. At all material times, Respondent, a corporation with an office located at 194-19 115th Avenue, St. Albans, New York, and a place of business located at 155-49 Broad Street, Rosedale, New York (its Rosedale facility), has been engaged in the business of carrying aggregates, such as dirt and other fill material, in tractor-trailer trucks, for clients located within the state of New York.

4. During the past year, which period is representative of its annual operations in general, Respondent, in conducting its operations described above in paragraph 3, purchased and received at its Rosedale facility goods valued in excess of \$50,000 from other enterprises located within the State of New York, which other enterprises had received these goods directly from points outside the State of New York.

5. At all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

6. At all material times, Building Material Teamsters Local 282, International Brotherhood of Teamsters (the Union), has been a labor organization within the meaning of Section 2(5) of the Act.

7. At all material times, (b) (6), (b) (7)(C) has been Respondent's (b) (6), (b) (7)(C) and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of 2(13) of the Act.

8. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer and working at or out of the Employer's Rosedale facility, located at 155-49 Broad Street, Rosedale, New York.

9. (a) On November 5, 2015, in Case No. 29-RC-162156, the NLRB conducted a representation election among the employees in the Unit.

(b) On November 19, 2015, the NLRB certified the Union as the exclusive collective-bargaining representative of the Unit.

10. At all times since November 5, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

11. About (b) (6), (b) (7)(C) 2015, Respondent discharged the following employees:

- (a) (b) (6), (b) (7)(C)
- (b) (b) (6), (b) (7)(C)
- (c) (b) (6), (b) (7)(C)
- (d) (b) (6), (b) (7)(C)
- (e) (b) (6), (b) (7)(C)
- (f) (b) (6), (b) (7)(C)

12. The conduct described above in paragraph 11 is inherently destructive of the rights guaranteed employees by Section 7 of the Act.

13. About (b) (6), (b) (7)(C) 2016, Respondent offered reinstatement to the following employees, conditioned on the named employees rejecting the Union:

- (a) (b) (6), (b) (7)(C)
- (b) (b) (6), (b) (7)(C)
- (c) (b) (6), (b) (7)(C)

(d) (b) (6), (b) (7)(C)

(e) (b) (6), (b) (7)(C)

14. Respondent engaged in the conduct described above in paragraphs 11 and 13 because the named employees of Respondent supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

15. The subject set forth above in paragraph 11 relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject of bargaining for the purposes of collective bargaining.

16. Respondent engaged in the conduct described above in paragraph 11 without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

17. About (b) (6), (b) (7)(C) 2016, Respondent, by (b) (6), (b) (7)(C) bypassed the Union and dealt directly with its employees in the Unit by proposing terms and conditions of employment to return to work to employees through text messages and telephone calls.

18. By the conduct described above in paragraphs 11, 13, and 14, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

19. By the conduct described above in paragraphs 11, 16, and 17, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

20. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

21. In order to fully remedy the unfair labor practices set forth above, the General Counsel seeks an order requiring that the employees be made whole, including, but not limited to, payment for consequential economic harm they incurred as a result of the Respondent's unlawful conduct. Further, the General Counsel seeks an order requiring that the Notice be read to employees during working time by (b) (6), (b) (7)(C).

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before September 13, 2016, or postmarked on or before September 12, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a

pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **November 1, 2016 at 9:30 am** at Two MetroTech Center, 5th Floor, Brooklyn, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 30, 2016



JAMES G. PAULSEN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

Attachments

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

DAWN TRUCKING INC. and (b) (6), (b) (7)(C) an individual	Case Nos. 29-CA-171337 & 29-CA-174915
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ANSWER

Pursuant to 29 U.S.C. § 160(b) and Section 102.20 of the Rules and Regulations of the National Labor Relations Board, Respondent Dawn Trucking Inc. (“Dawn”), by and through its undersigned counsel, as and for its answer to the Consolidated Complaint and Notice of Hearing in the above-captioned matter (“Complaint”), states as follows:

1. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 2 of the Complaint.
3. Admits that Dawn is a corporation engaged in the business of material transport; otherwise denies each and every remaining allegation contained in Paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to where customers may have received goods prior to Dawn’s involvement; otherwise denies each and every remaining allegation contained in Paragraph 4 of the Complaint.
5. Denies each and every allegation contained in Paragraph 5 of the Complaint.
6. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6 of the Complaint.

7. Admits that (b) (6), (b) (7)(C) is a stockholder of Dawn; otherwise denies each and every remaining allegation contained in Paragraph 7 of the Complaint.

8. Denies each and every allegation contained in Paragraph 8 of the Complaint.

9. Admits that a union election occurred on the indicated date; otherwise denies each and every remaining allegation contained in Paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Complaint.

11. Denies each and every allegation contained in Paragraph 11 of the Complaint.

12. Denies each and every allegation contained in Paragraph 12 of the Complaint.

13. Admits that the indicated individuals received offers to work for Dawn; otherwise denies each and every remaining allegation contained in Paragraph 13 of the Complaint.

14. Denies each and every allegation contained in Paragraph 14 of the Complaint.

15. Denies each and every allegation contained in Paragraph 15 of the Complaint.

16. Denies each and every allegation contained in Paragraph 16 of the Complaint.

17. Admits that (b) (6), (b) (7)(C) made an offer of employment to certain workers; otherwise denies each and every allegation contained in Paragraph 17 of the Complaint.

18. Denies each and every allegation contained in Paragraph 18 of the Complaint.

19. Denies each and every allegation contained in Paragraph 19 of the Complaint.

20. Denies each and every allegation contained in Paragraph 20 of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to what the General Counsel seeks; otherwise denies each and every remaining allegation contained in Paragraph 21 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

22. The Complaint fails to state a charge under Section 8(a).

SECOND AFFIRMATIVE DEFENSE

23. Any business closure alleged herein was pursuant to the absolute right of the owner to close such business.

THIRD AFFIRMATIVE DEFENSE

24. Any employment action as alleged herein was for justifiable economic purposes.

FOURTH AFFIRMATIVE DEFENSE

25. Any employment action as alleged herein was justifiable due to employee insubordination, misconduct, negligence, and/or other appropriate grounds for termination.

FIFTH AFFIRMATIVE DEFENSE

26. Any failure to bargain as alleged herein de minimis, as the parties would have been unable to reach agreement, resulting in an impasse which would have justified Dawn's alleged unilateral activity.

SIXTH AFFIRMATIVE DEFENSE

27. Any failure to bargain as alleged herein resulted in no damages to the named workers, as their actual income over the period in which they did not work for Dawn is equal to or exceeds the income they would have made working for Dawn.

SEVENTH AFFIRMATIVE DEFENSE

28. The named workers failed to mitigate their damages from any failure to bargain as alleged herein.

WHEREFORE, by reason of the foregoing, Respondent Dawn Trucking Inc. demands judgment dismissing the Complaint with prejudice, in addition to such other and further relief as

the Board deems just, equitable, and proper.

Dated: New York, New Yo [REDACTED]
September 12, 2016

Sullivan PC

-----/s/-----

Peter Sullivan
Attorneys for Dawn Trucking Inc.
7 E. 20th Street
New York, New York 10003
(212) 687-5900

[REDACTED]

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

DAWN TRUCKING INC. and (b) (6), (b) (7)(C) an individual	Case Nos. 29-CA-171337 & 29-CA-174915
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AMENDED ANSWER

Pursuant to 29 U.S.C. § 160(b) and Section 102.20 of the Rules and Regulations of the National Labor Relations Board, Respondent Dawn Trucking Inc. (“Dawn”), by and through its undersigned counsel, as and for its amended answer to the Consolidated Complaint and Notice of Hearing in the above-captioned matter (“Complaint”), states as follows:

1. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 2 of the Complaint.
3. Admits that Dawn was a corporation engaged in the business of material transport; otherwise denies each and every remaining allegation contained in Paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to where customers may have received goods prior to Dawn’s involvement; otherwise denies each and every remaining allegation contained in Paragraph 4 of the Complaint.
5. Denies each and every allegation contained in Paragraph 5 of the Complaint.
6. Denies knowledge or information sufficient to form a belief as to the allegations

contained in Paragraph 6 of the Complaint.

7. Admits that (b) (6), (b) (7)(C) is a stockholder of Dawn; otherwise denies each and every remaining allegation contained in Paragraph 7 of the Complaint.

8. Denies each and every allegation contained in Paragraph 8 of the Complaint.

9. Admits that a union election occurred on the indicated date; otherwise denies each and every remaining allegation contained in Paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Complaint.

11. Denies each and every allegation contained in Paragraph 11 of the Complaint.

12. Denies each and every allegation contained in Paragraph 12 of the Complaint.

13. Admits that the indicated individuals received offers to work for Dawn; otherwise denies each and every remaining allegation contained in Paragraph 13 of the Complaint.

14. Denies each and every allegation contained in Paragraph 14 of the Complaint.

15. Denies each and every allegation contained in Paragraph 15 of the Complaint.

16. Denies each and every allegation contained in Paragraph 16 of the Complaint.

17. Admits that (b) (6), (b) (7)(C) made an offer of employment to certain workers; otherwise denies each and every allegation contained in Paragraph 17 of the Complaint.

18. Denies each and every allegation contained in Paragraph 18 of the Complaint.

19. Denies each and every allegation contained in Paragraph 19 of the Complaint.

20. Denies each and every allegation contained in Paragraph 20 of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to what the General Counsel seeks; otherwise denies each and every remaining allegation contained in Paragraph 21 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

22. The Complaint fails to state a charge under Section 8(a).

SECOND AFFIRMATIVE DEFENSE

23. Any business closure alleged herein was pursuant to the absolute right of the owner to close such business.

THIRD AFFIRMATIVE DEFENSE

24. Any employment action as alleged herein was for justifiable economic purposes.

FOURTH AFFIRMATIVE DEFENSE

25. Any employment action as alleged herein was justifiable due to employee insubordination, misconduct, negligence, and/or other appropriate grounds for termination.

FIFTH AFFIRMATIVE DEFENSE

26. Any failure to bargain as alleged herein de minimis, as the parties would have been unable to reach agreement, resulting in an impasse which would have justified Dawn's alleged unilateral activity.

SIXTH AFFIRMATIVE DEFENSE

27. Any failure to bargain as alleged herein resulted in no damages to the named workers, as their actual income over the period in which they did not work for Dawn is equal to or exceeds the income they would have made working for Dawn.

SEVENTH AFFIRMATIVE DEFENSE

28. The named workers failed to mitigate their damages from any failure to bargain as alleged herein.

WHEREFORE, by reason of the foregoing, Respondent Dawn Trucking Inc. demands judgment dismissing the Complaint with prejudice, in addition to such other and further relief as

the Board deems just, equitable, and proper.

Dated: New York, New York
September 14, 2016

Sullivan PC

A handwritten signature in blue ink, appearing to be 'Peter Sullivan', written over a horizontal line.

Peter Sullivan
Attorneys for Dawn Trucking Inc.
7 E. 20th Street
New York, New York 10003
(212) 687-5900

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

DAWN TRUCKING INC. and (b) (6), (b) (7)(C) an individual	Case Nos. 29-CA-171337 & 29-CA-174915
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SECOND AMENDED ANSWER

Pursuant to 29 U.S.C. § 160(b) and Section 102.20 of the Rules and Regulations of the National Labor Relations Board, Respondent Dawn Trucking Inc. (“Dawn”), by and through its undersigned counsel, as and for its second amended answer to the Consolidated Complaint and Notice of Hearing in the above-captioned matter (“Complaint”), states as follows:

1. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 2 of the Complaint.
3. Admits the allegations contained in Paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to where customers may have received goods prior to Dawn’s involvement; otherwise denies each and every remaining allegation contained in Paragraph 4 of the Complaint.
5. Admits each and every allegation contained in Paragraph 5 of the Complaint.
6. Admits the allegations contained in Paragraph 6 of the Complaint.
7. Admits the allegations contained in Paragraph 7 of the Complaint.
8. Admits each and every allegation contained in Paragraph 8 of the Complaint.

9. Admits the allegations contained in Paragraph 9 of the Complaint.
10. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Complaint.
11. Denies each and every allegation contained in Paragraph 11 of the Complaint.
12. Denies each and every allegation contained in Paragraph 12 of the Complaint.
13. Admits that the indicated individuals received unconditional offers to work for Dawn; otherwise denies each and every remaining allegation contained in Paragraph 13 of the Complaint.
14. Denies each and every allegation contained in Paragraph 14 of the Complaint.
15. Denies each and every allegation contained in Paragraph 15 of the Complaint.
16. Denies each and every allegation contained in Paragraph 16 of the Complaint.
17. Admits that Dawn, by (b) (6), (b) (7)(C) made an unconditional offers of employment; otherwise denies each and every allegation contained in Paragraph 17 of the Complaint.
18. Denies each and every allegation contained in Paragraph 18 of the Complaint.
19. Denies each and every allegation contained in Paragraph 19 of the Complaint.
20. Denies each and every allegation contained in Paragraph 20 of the Complaint.
21. Denies knowledge or information sufficient to form a belief as to what the General Counsel seeks; otherwise denies each and every remaining allegation contained in Paragraph 21 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

22. The Complaint fails to state a violation under Section 8(a) of the Act.

SECOND AFFIRMATIVE DEFENSE

23. Any business closure alleged herein was pursuant to the absolute right of the

Dawn to close such business.

THIRD AFFIRMATIVE DEFENSE

24. Any alleged employment action as alleged herein was for justifiable economic purposes.

FOURTH AFFIRMATIVE DEFENSE

25. Any alleged employment action as alleged herein was justifiable due to employee insubordination, misconduct, negligence, and/or other appropriate grounds for termination.

FIFTH AFFIRMATIVE DEFENSE

26. Any alleged failure to bargain as alleged herein is de minimis, as the parties would have been unable to reach agreement, resulting in an impasse which would have justified Dawn's alleged unilateral activity.

SIXTH AFFIRMATIVE DEFENSE

27. Any failure to bargain as alleged herein resulted in no damages to the named workers, as their actual income over the period in which they did not work for Dawn is equal to or exceeds the income they would have made working for Dawn.

SEVENTH AFFIRMATIVE DEFENSE

28. The named workers failed to mitigate their damages.

EIGHTH AFFIRMATIVE DEFENSE

29. Dawn did not violate the National Labor Relations Act when it locked out its employees.

NINTH AFFIRMATIVE DEFENSE

30. Dawn did not discharge its employees.

TENTH AFFIRMATIVE DEFENSE

31. Dawn lawfully and unconditionally offered to reinstate the named workers in (b) (6), (b) (7)(C) 2016 and again in (b) (6), (b) (7)(C) 2016. On both occasions, the employees declined reinstatement.

ELEVENTH AFFIRMATIVE DEFENSE


32. At all times material herein Dawn bargained in good faith with the collective bargaining representative of its employees.

WHEREFORE, by reason of the foregoing, Respondent Dawn Trucking Inc. demands judgment dismissing the Complaint with prejudice, in addition to such other and further relief as the Board deems just, equitable, and proper.

Dated: Commack, New York
November 22, 2016

The Ziskin Law Firm, LLP

By: _____


Richard B. Ziskin
Attorneys for Respondent
Dawn Trucking Corp.
Office & P.O. Address:
6268 Jericho Turnpike
Suite 12A
Commack, New York 11725
(631) 462-1417

CERTIFICATE OF SERVICE


STATE OF NEW YORK)
COUNTY OF SUFFOLK)

I, Richard B. Ziskin, an attorney admitted to practice in the courts of the State of New York and in the federal district courts of the Southern and Eastern Districts of the State of New York, do hereby certify, under the penalties of perjury, that true and correct copies of Respondent's Second Amended Answer to the Complaint are served by certified mail, return receipt request and by mailing same in a sealed envelope, with postage pre-paid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee as indicated below:

National Labor Relations Board
Region 29
Two Metrotech Center North- 5th Floor
Suite 5100
Brooklyn, NY 11201-4201
Att: Kathy Drew-King, Regional Director

(b) (6), (b) (7)(C)

Dated: Commack, New York
November 22, 2016



Richard B. Ziskin, Esq.

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

DAWN TRUCKING INC. and (b) (6), (b) (7)(C) an individual	Case Nos. 29-CA-171337 & 29-CA-174915
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THIRD AMENDED ANSWER

Pursuant to 29 U.S.C. § 160(b) and Section 102.20 of the Rules and Regulations of the National Labor Relations Board, Respondent Dawn Trucking Inc. ("Dawn"), by and through its undersigned counsel, as and for its third amended answer to the Consolidated Complaint and Notice of Hearing in the above-captioned matter ("Complaint"), states as follows:

1. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the date the charges were filed; admits the remaining allegations contained in Paragraph 2 of the Complaint.
3. Admits the allegations contained in Paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to where customers may have received goods prior to Dawn's involvement; otherwise denies each and every remaining allegation contained in Paragraph 4 of the Complaint.
5. Admits each and every allegation contained in Paragraph 5 of the Complaint.
6. Admits the allegations contained in Paragraph 6 of the Complaint.
7. Admits the allegations contained in Paragraph 7 of the Complaint.
8. Admits each and every allegation contained in Paragraph 8 of the Complaint.

9. Admits the allegations contained in Paragraph 9 of the Complaint.
10. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Complaint.
11. Denies each and every allegation contained in Paragraph 11 of the Complaint.
12. Denies each and every allegation contained in Paragraph 12 of the Complaint.
13. Admits that the indicated individuals received unconditional offers to work for Dawn; otherwise denies each and every remaining allegation contained in Paragraph 13 of the Complaint.
14. Denies each and every allegation contained in Paragraph 14 of the Complaint.
15. Denies each and every allegation contained in Paragraph 15 of the Complaint.
16. Denies each and every allegation contained in Paragraph 16 of the Complaint.
17. Admits that Dawn, by (b) (6), (b) (7)(C) made an unconditional offers of employment; otherwise denies each and every allegation contained in Paragraph 17 of the Complaint.
18. Denies each and every allegation contained in Paragraph 18 of the Complaint.
19. Denies each and every allegation contained in Paragraph 19 of the Complaint.
20. Denies each and every allegation contained in Paragraph 20 of the Complaint.
21. Denies knowledge or information sufficient to form a belief as to what the General Counsel seeks; otherwise denies each and every remaining allegation contained in Paragraph 21 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

22. The Complaint fails to state a violation under Section 8(a) of the Act.

SECOND AFFIRMATIVE DEFENSE

23. Any business closure alleged herein was pursuant to the absolute right of the

Dawn to close such business.

THIRD AFFIRMATIVE DEFENSE

24. Any alleged employment action as alleged herein was for justifiable economic purposes.

FOURTH AFFIRMATIVE DEFENSE

25. Any alleged employment action as alleged herein was justifiable due to employee insubordination, misconduct, negligence, and/or other appropriate grounds for termination.

FIFTH AFFIRMATIVE DEFENSE

26. Any alleged failure to bargain as alleged herein is de minimis, as the parties would have been unable to reach agreement, resulting in an impasse which would have justified Dawn's alleged unilateral activity.

SIXTH AFFIRMATIVE DEFENSE

27. Any failure to bargain as alleged herein resulted in no damages to the named workers, as their actual income over the period in which they did not work for Dawn is equal to or exceeds the income they would have made working for Dawn.

SEVENTH AFFIRMATIVE DEFENSE

28. The named workers failed to mitigate their damages.

EIGHTH AFFIRMATIVE DEFENSE

29. Dawn did not violate the National Labor Relations Act when it locked out its employees.

NINTH AFFIRMATIVE DEFENSE

30. Dawn did not discharge its employees.

TENTH AFFIRMATIVE DEFENSE

31. Dawn lawfully and unconditionally offered to reinstate the named workers in (b) (6), (b) (7)(C) 2016 and again in (b) (6), (b) (7)(C) 2016. On both occasions, the employees declined reinstatement.

ELEVENTH AFFIRMATIVE DEFENSE

32. At all times material herein Dawn bargained in good faith with the collective bargaining representative of its employees.

TWELFTH AFFIRMATIVE DEFENSE

33. The allegations in the May 23, 2016 unfair labor practice charge (29-CA-171337) are time barred under Section 10(b) of the Act. Specifically, the alleged unlawful acts that are complained of in paragraphs numbered eleven (11) through twelve (12), fourteen (14) through sixteen (16) and eighteen (18) through twenty-one (21) of the Complaint dated August 30, 2016 are time barred.

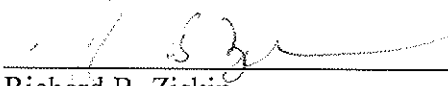
a. In this regard, the May 23, 2016 charge was filed more than six (6) months after the date of the alleged discharges on November 6, 2015; and

b. Further, the May 23, 2016 charge was filed more than six (6) months after the Respondent allegedly failed to give the Union (i) prior notice of the alleged discharges and/or (ii) the opportunity to bargain over the alleged discharges.

WHEREFORE, by reason of the foregoing, Respondent Dawn Trucking Inc. demands judgment dismissing the Complaint with prejudice, in addition to such other and further relief as the Board deems just, equitable, and proper.

Dated: Commack, New York
December 9, 2016

The Ziskin Law Firm, LLP

By: 
Richard B. Ziskin
Attorneys for Respondent
Dawn Trucking Corp.
Office & P.O. Address:
6268 Jericho Turnpike
Suite 12A
Commack, New York 11725
(631) 462-1417

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
COUNTY OF SUFFOLK)

I, Richard B. Ziskin, an attorney admitted to practice in the courts of the State of New York and in the federal district courts of the Southern and Eastern Districts of the State of New York, do hereby certify, under the penalties of perjury, that true and correct copies of Respondent's Third Amended Answer to the Complaint are served by certified mail, return receipt request and by mailing same in a sealed envelope, with postage pre-paid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addresses as indicated below:

National Labor Relations Board
Region 29
Two Metrotech Center North- 5th Floor
Suite 5100
Brooklyn, NY 11201-4201
Att: Kathy Drew-King, Regional Director

(b) (6), (b) (7)(C)

Dated: Commack, New York
December 9, 2016


Richard B. Ziskin, Esq.